

CONCLUSION

In this paper, it has not been possible to do more than call attention to the necessity for a reexamination of the doctrine in the light of its historical buttresses, its development, and its modern setting. If it is deemed essential by the courts to find some underlying premise which will logically justify such an award, the theory should be one which will not distort the primary functions of the civil tribunal. True it is, however, that the logical conclusion may not be correct, and may, if not tempered in the fires of ultimate justice, warp the fundamental purpose of the court.

But whether or not from the standpoint of expediency, or in practical effect, it is desirable for the civil court to inflict penalties or otherwise act to supplement the basal objectives of the criminal forum, is a serious question, not to be passed upon lightly.

It is suggested, therefore, that the problem ought to evoke careful study and analysis, in its many ramifications.

County Home Rule in Ohio

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On November 7, 1933 the voters of Ohio approved an amendment to the state constitution which conferred upon counties in the state many of the powers of local self government which cities have enjoyed in this state since September 1912. This amendment was in form a new Article X, the former Article X being wholly repealed. The old article had prevented reform in county government by requiring that all county officers be elected, by limiting terms of office and by requiring that all counties be governed by general state law. The new article contemplates three possible bases for county government: (1) general law, (2) optional law, and (3) home rule charter. Officers may be appointed rather than elected if that is desired and terms of office can be provided by the law or charter without any constitutional limits.

Those counties which take no positive action to adopt optional or home rule charters will continue to be governed under the general law. At present, all counties are so governed. But the amendment permits the legislature to make substantial changes in the general law which before were difficult or impossible. The principal change which seems desirable is a drastic shortening of the ballot. This can be done by consolidating county offices and by changing many now elective to the appointive group. Changes may also now be made in the law relating to the term of office for sheriff and treasurer, who were under the old constitutional provision limited to four years in any six.

The general assembly is given authority to enact optional charter laws for counties. These would presumably be similar to the optional laws now in existence for cities. There might be several possible forms of charter, different from that prescribed by the general law, to be adopted by a vote of the citizens of the county. No one can predict exactly what these optional charters will contain, but there is a Commission on County Government now studying the problem and preparing drafts of such charters for the consideration of the General Assembly when it meets in January 1935.

The provisions of the constitutional amendment regarding home rule for counties are self-executing, that is no supplementary legislation is required to enable a county to proceed to draft a charter. In fact Cuyahoga, Lucas, Mahoning, and Hamilton counties on November 6, 1934 voted to proceed with the drafting of such charters and elected charter commissions to do the work. Votes were also had in Stark, Summit, Franklin, and Montgomery counties, but the proposal was defeated. In the last named county it appears that the defeat was solely due to the failure of the voters to mark the question, "Shall a Charter Commission be chosen," as well as to vote on the names proposed for members of the commission. In those counties where charter commissions were chosen it now becomes their duty to prepare, within ten months, a proposed charter for submission to the voters.

A home rule charter for a county may provide for the form of its government, may determine which of its officers shall be elected and which appointed, and the manner of choosing them, may provide for the exercise of all powers vested in and the

performance of all duties imposed upon counties and county officers by law. Such a charter when prepared must be submitted to a vote of the people of the county. If approved by a majority of those voting on the question of its adoption it goes into effect thirty days after the election. This is the simplest form of county home rule charter. Provision is also made in the amendment for a more complex form.

It has long been known that townships, cities and villages are often too small in area and resources to perform effectively some of the functions of modern government. Under the county home rule amendment the charter commission may provide for the transfer of some or all of the functions of these smaller subdivisions to the county. Such a transfer would not terminate the existence of the subdivisions; it would simply substitute the county for the smaller area in performing a specific public service. Among the functions which have been mentioned as suitable for such transfer are: fire protection, police protection, poor relief, highway construction and maintenance, etc. The charter may provide for zones or areas of differential tax rate in the county in order to let each area pay only for the services rendered. When such a transfer is proposed by the charter, the vote of approval must include a majority of those voting on the question first in the county as a whole, second in the largest city or village in the county, third in the county outside of the largest city or village, and fourth, in each of a majority of the combined total of cities, villages, and townships in the county.

From a legal standpoint one of the most interesting provisions of the amendment is that which permits the charter commission to include a provision in the charter conferring upon the county the status of a municipal corporation. This means much more than is apparent on the surface. In its status as a quasi-corporation a county had no liability for tort except under express statutes. Cities and other true municipal corporations, however, were held to be liable for torts in connection with proprietary functions. Lawyers will watch the development of new law in this connection with great interest.

Just what forms of organization will be provided for counties under home rule charters cannot well be predicted. It seems likely, however, that there will be a tremendous shortening of the ballot by consolidation of offices and by making

appointive offices now filled by election. It seems probable that sooner or later some county will adopt the manager plan, under which the people would elect only the members of the board of county commissioners and they would appoint a county manager who would, in turn, appoint all department heads. Subordinate offices would be filled under civil service regulations. Certainly the deputy "racket" should be and will be broken up under such a system.

County home rule charters will not affect the courts since they are state agencies. It may be found desirable to have the courts, rather than the county commissioners or county manager, choose the sheriff and prosecuting attorney. In all other cases it would seem perfectly proper to leave appointments in the hands of the manager and the board. If the sheriff is to be appointed by the courts, his functions in law enforcement should be separated from those as a court officer and given to a county police department. Similarly the prosecutor's functions as an adviser to county officers might have to be separated from those as a court officer and given to a newly created county solicitor chosen by the board or manager.

Certainly the continuance of our system of local government depends upon our ability to make it more efficient. Taxpayers will not always endure the inefficiency of our present scheme. The state will swallow up the local units as it has done to a large extent in North Carolina unless reforms are made. The way is now open in Ohio. May we make the most of our opportunity.